on the court by the Act the same powers and duties as they have in respect of matters connected with the civil jurisdiction of the court."

In the course of the argument the following passage from the judgment of Hewson J. in *The Constellation* [1] at p. 543 was referred to:—

"Arrest and sale in Admiralty are, in my view, equivalent to sequestration and execution respectively and are incidents in proceedings *in rem*. 'Proceedings' includes executions and I take that from the authority of Sir George Jessel M.R., in *In re Artistic Colour Printing Company* (1880), 14 Ch. D. 502. at p. 505"

Counsel for the plaintiffs has pointed out that this passage is an *obiter dictum*. He has said further that *The Zafiro*,[2] in which it was held that the arrest of a vessel was not an execution within the meaning of section 325 of the Companies Act, 1948, was not cited to the judge who heard the case of *The Constellation*, *supra*. On this point, it is to be observed that it was the same judge, namely Hewson J., who heard both *The Zafiro*, *supra*, and *The Constellation*, *supra*. What is even more important is the fact that in both those cases Hewson J. was considering the precise meaning of certain words and phrases used in the Companies Act, 1948. For example, in *The Zafiro*, *supra*, Hewson J. had to decide whether the meaning of the word "execution" could be extended to include a writ *in rem* in the circumstances that he had to consider in that case. The question which I have to decide is an entirely different one, the question being whether the two types of proceedings under consideration are similar or analogous. In my view they are not similar. It therefore remains for me to decide whether they are analogous.

An analogy may be defined as a partial similarity between two things or proceedings on which a comparison may be based. The word "analogous" therefore has the meaning of corresponding in some particular or particulars.

Counsel for the plaintiffs has pointed out the differences between the two types of proceedings. In this connection I would refer to the following extract from the headnote in the American case of *Sturm* v. *Ulrich* [3]:—

"'Analogy' does not mean identity, but implies a difference."

In my opinion, there are a number of similarities in the two types of proceedings and I have therefore reached the conclusion that they are analogous. The fact that the object of a plaintiff in effecting the arrest of a vessel is usually to obtain security does not, in my view, prevent the two types of proceedings — which involve an actual sale — from being analogous. No doubt if sufficient security is furnished, a vessel which has been arrested will be released. This was one of the points made by counsel for the plaintiffs. What is being considered, however, is the type of proceedings in which a vessel which has been arrested under a warrant of arrest is actually sold by the Sheriff. In my opinion, this type of proceedings is analogous to the proceeding in which goods seized by the Sheriff under a writ of seizure and sale are sold by him.

It follows therefore that in my judgment the Sheriff's commission in this case should be charged in accordance with item 115 of Schedule B to the Rules of the Supreme Court, 1934. The Sheriff's costs of this motion are to be taxed on the higher scale and paid out of the proceeds of sale.

Order accordingly.

Solicitors: *Rodyk & Davidson.*

LIM AH CHI v. TAN AH MUI & ANOR.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Winslow J.) November 19, 1968]

[Singapore—Federal Court Civil Appeal No. Y15 of 1968]

Damages — Fatal accident — Self employed "pow" seller — Loss of pecuniary benefits to dependants — — Possibility of widow's re-marriage — Evidence of deceased's earnings — Court using its own understanding of conditions prevailing in regard to one-man business.

The deceased aged 28, was a self-employed "pow" seller. He died in a motor accident as a consequence of the negligence of the appellant. His dependants were a widow, aged 23, three children aged 5, 4 and 1 and parents. In the court below a sum of $29,904 damages was awarded. The appellant contended that this award was manifestly excessive having regard to the evidence adduced on the respondents' behalf with regard to the earnings of the deceased.

The Federal Court agreed with the learned trial judge that as the deceased was only 28 years old when he died, a computation based on a purchase of 20 years was reasonable even if one took into account the possibility of the widow's re-marriage. However owing to the paucity of credible evidence as to the deceased's actual earnings from his business as a "pow" seller, the court used its own understanding of conditions prevailing in Singapore in regard to one-man business of this particular kind to arrive at a reasonable figure which did not conflict with the evidence adduced, and allowing the appeal,

Held: the loss of pecuniary benefits to the dependants ought to have been assessed at the sum of $140 per month which, on a purchase for 20 years, work out at approximately $20,932.

FEDERAL COURT.

Ng Kian Fong for the appellant.

D.G. Ironside for the respondents.

Cur. Adv. Vult.

Winslow J. (delivering the judgment of the court): This is an appeal against that part of the decision of Choor Singh J. given on 3rd

May, 1968 which determined the quantum of the award herein to be the sum of $29,904 for the widow, her three children and the parents of the deceased who died in a motor accident as a consequence of the negligence of the appellant in early September 1966.

Counsel for the appellant contended that this award is manifestly excessive having regard to the evidence adduced on the respondents' behalf with regard to the earnings of the deceased.

The only evidence regarding the loss of pecuniary benefits on the part of the defendants was that of the widow of the deceased who claimed that her husband gave her $10 per day for household expenses from his earnings as a "pow" seller carrying on business in a coffee-shop near the Redhill market. She said that, out of this amount, she paid a rent of $31 per month for the two rooms occupied by her and the other dependants, including the parents, in Paya Lebar Road. Her deceased husband had his meals outside except for breakfast which cost her about $10 per month. The parents had all their meals with her. She also claimed that her husband did smoke but did not drink or pay income tax. Her husband was self-employed but his younger brother used to assist him in the "pow" business which he had been carrying on for the preceding two years. She had no personal knowledge of how her husband ran his business or what profits he made nor was the brother or any of the four employees, whom her husband was supposed to have had to assist him in the business, called to give evidence. After the husband's death, his younger brother took over the business but according to the widow, the brother was not doing too well in the business because "pows" were no longer in good demand and his profits were marginal. When asked whether her brother-in-law paid her anything at all every month, she said that he had no money to spare. The court is therefore left with only her bare statement that she received $10 per day from her husband to assist it in calculating the value of the dependency claim on the basis of the loss to the dependants of the pecuniary benefits they could reasonably expect to receive had the deceased continued to live.

It should be remembered that her husband owned a motor-cycle which was involved in the accident and that he presumably used this motor-cycle for the purpose of transporting himself between Paya Lebar Road where he lived and his place of business near the Redhill market which is at the other end of the city. He must have incurred expenses in connection with the maintenance of this vehicle including petrol, tax and insurance and also on all his other meals and on tobacco. There is no evidence as to whether these expenses came out of the $10 per day which the widow said she received or whether these were paid for separately by him out of his profits. In these circumstances it was all the more important that evidence should have been led as to his profits from his business so as to satisfy the court that he could genuinely have afforded to give his wife $10 per day as claimed by her because these additional expenses could well have amounted to something like $75 per month at least.

Choor Singh J. made an award based on the loss of pecuniary benefits to the dependants at the rate of $200 per month spread over a 20-year period since the deceased was 28 years of age at the time of his death and the widow was then 23. He took into account, according to his grounds of judgment, the submission that as the widow was only 25 years of age when he delivered judgment, she might re-marry. She has three sons by the deceased who were aged 5, 4 and 1 at his death.

It does not seem to us, in view of the fact that the deceased was only 28 years old when he died, that a computation based on a purchase of 20 years is unreasonable even if one takes into account, as the trial judge did, the possibility of her re-marrying since she is still comparatively young and not entirely devoid of value in the matrimonial market despite her having three young sons on her hands.

The matter which has caused us some anxiety, however, is the paucity if not the total absence of credible evidence as to his actual earnings from his business as a "pow" seller. The trial judge found that the deceased did maintain his dependants out of whatever income he derived from his business. What puzzles us is whether he adopted the correct yardstick in reaching the figure of $200 per month as their loss of pecuniary benefits considering that there was no evidence as to his earnings from the "pow" business such as to justify the award, particularly in the light of the fact that the judge appears only to have partially accepted the figure of $300 per month which she put forward as the total monthly sum the deceased gave her to provide for the needs of the dependants.

No finding has been made as to the actual income of the deceased nor even on the question whether the deceased had four employees to assist him in running the "pow" stall at a coffee-shop has any finding been made one way or the other. One is therefore left at large as to the kind of income a "pow" seller at a stall in a coffee-shop in a locality such as the one in question could have made. In the absence of

evidence as to this, the court using its best endeavours to resolve a well-nigh insoluble situation, is driven to use its own understanding of conditions prevailing in Singapore in regard to one-man businesses of this particular kind, to arrive at a reasonable figure which does not conflict with the evidence adduced, bearing in mind that the evidence to some extent went to show that the business was not doing so well after the death of the deceased. The widow herself said that his younger brother was now only making marginal profits and that "pow" were no longer in good demand.

We have already pointed out that the widow's claim that she received $10 per day from her husband was only partially accepted by the trial judge. We do not know however how he arrived at the figure of $200 per month on the available evidence. He has not said a word about the income of the business, or whether it had four employees, or what its future was likely to be. In our opinion, a business such as the deceased's could have earned a net income of not more than 7 or 8 dollars per day and accordingly we find that the trial judge's assessment on the basis of $200 per month was clearly excessive. Doing the best we can and taking into consideration all the factors we have earlier set out, we would assess his monthly profits at about $225. Making a deduction of $75 per month all that he could reasonably spare was in the region of about $150 per month. From this $10 per month should alsi be deducted for the breakfast he had at home.

In our judgment the loss of pecuniary benefits to the dependants ought to have been assessed at the sum of $140 per month which, on a purchase for 20 years, works out at approximately $20,932. The awards to the individual dependants will accordingly be proportionately reduced by 30% in each case.

The appeal is accordingly allowed with costs.

Appeal allowed.

Solicitors: *Ng Kian Fong; Ironside & de Souza.*

LING CHENG KIEW v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) January 28, 1969]
[Ipoh — Criminal Appeal No. 4 of 1969]

Road Traffic — Goods carried for purposes of trade or business — Presumption — Road Traffic Ordinance, 1958, ss. 98(1) and 144(a).

The appellant when arrested was carrying in an open pail mounted on the carrier of his motor cycle 8-10 katies of pork with a weighing machine, a knife, a piece of plank and strings and papers. He was charged with the offence under section 98(1) of the Road Traffic Ordinance, 1958, of carrying goods without there being in force a carrier's licence and secondly with the offence of such user without a valid policy of insurance in respect of 3rd party risks. He was convicted and sentenced to a fine of $25 on the first charge and $30 on the second charge and it was also ordered that he be disqualified for one year from holding a driving licence.

Held, dismissing the appeal: the inference to be drawn from the evidence was one of hawking, therefore a *prima facie* case had been raised against the appellant.

[**Editorial Note:** Reference may be made to *Mah Wah Yeow* v. *Public Prosecutor* [1961] M.L.J. 146 and *Chng Kak Tow* v. *Public Prosecutor* [1968] 1 M.L.J. 20.]

MAGISTRATE'S CRIMINAL APPEAL.

Tan Sun Cheong for the appellant.

M. Mahalingam (Deputy Public Prosecutor) for the respondent.

Chang Min Tat J. (delivering oral judgment): The appellant was charged with the offence under section 98(1) of the Road Traffic Ordinance, 1958, of carrying goods without there being in force a carrier's licence and secondly with the offence of such user without a valid policy of insurance in respect of third party risks. He was convicted and sentenced to a fine of $25 on the first charge and $30 on the second charge and it was also ordered that the appellant be disqualified for one year from holding a driving licence.

The facts which are not in dispute disclose that when he was arrested the appellant carried in a big open pail mounted on the carrier of his motor cycle about 10 katies of pork, some twine or cord, some pieces of paper and a weighing instrument.

The learned magistrate called on the defence raising against the defence the presumption under section 144(a) of the Road Traffic Ordinance. The Federal Court on 27th January 1969* decided that the presumption under section 144(a) of the Road Traffic Ordinance could only be raised against an accused person in respect of hire or reward. What I understand the decision to mean (and I am aware of a possibility of misunderstanding since I have not read the decision) is that the presumption cannot be raised to apply to a case of carriage of a man's own goods since there was no hire or reward. It is clear in view of the decision of the Federal Court that the presumption was wrongly raised against the defendant.

However an appeal is by way of re-hearing and it is incumbent upon me sitting on appeal to determine whether without this presumption there was evidence of a *prima facie* case against

* Since reported, see *Siah Ik Kow* v. *Public Prosecutor*, *ante* p. 121.